

FINAL ADMINISTRATIVE PENALTY ORDER

Under the authority granted by 33 U.S.C. § 1319(g) and 33 CFR Part 326.6, I, Colonel John E. Pulliam, Jr., District Engineer, Wilmington District, issue this order assessing a Class 1 Administrative Penalty for violation of the above-referenced permit.

Name/Address of Permittee:

Sunset Bay, LLC

Kill Devil Hills, North Carolina 27948

Permitted Activity:

The discharge of earthen fill material within Department of the Army (DA) jurisdictional wetlands to facilitate the development of a residential/condominium complex on property at the Bermuda Bay Development, located off the south side of Ocean Bay Boulevard, adjacent to Colington Creek, in Kill Devil Hills, Dare County, North Carolina, consistent with the application and plans for USACE Permit Nos. 200411323 and 200411324.

Condition(s) or Limitation(s) of Permit Reportedly Violated:

Sunset Bay, LLC, failed to comply with special condition b. of the subject permits, which state that, "The Permittee shall preserve and maintain 3.0 acres of DA jurisdictional wetlands identified on the applicant's property plat submitted with the application (plat number P01077, dated 2-26-04, titled Sunset Bay, LLC). The Permittee is prohibited from performing any of the following activities on the property: Filling; grading; excavating; earth movement of any kind; construction of roads, buildings, signs, or any other structure; any activity that may alter the drainage patterns on the property; the destruction, mowing, or other alteration of vegetation on the property; disposal or storage of any garbage, trash, or other waste material; or any other activity which would result in the wetlands being adversely impacted or destroyed. Conservation area boundary shall be clearly marked to prevent future inadvertent impacts."

Special Condition c. of the subject permits state that, "Prior to beginning work authorized by this permit, the Permittee shall execute and cause to be recorded a conservation easement prohibiting those activities listed in condition b. above. The holder of this easement shall be approved by the Corps of Engineers prior to recordation of the easement. The Permittee shall provide the Corps of Engineers, a copy of the recorded easement within 60 days of the recordation of the easement. The Permittee shall take no action inconsistent with the terms and purpose of the conservation easement on the property described therein."

Special Condition d. of the subject permits state that, "Condition c. above runs with the land. The Permittee shall not sell, lease, or otherwise convey any interest in the property without first providing sixty (60) days written notice to the Corps of Engineers of the proposed conveyance. The instrument

affecting such conveyance shall include legally binding restrictions on the use of the mitigation property as described in condition b. above, to be enforceable by the Permittee as well as the U.S. Army Corps of Engineers, Wilmington District. The instrument establishing such restrictions shall be subject to the approval of the Corps of Engineers. The Permittee shall enforce the terms of the required restrictions."

Description of the Nature of the Violation(s):

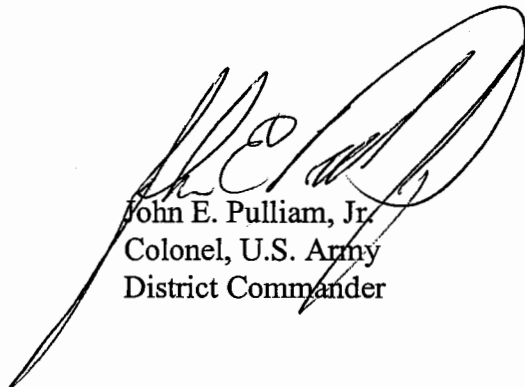
Sunset Bay, LLC, began construction of the residential/condominium complex without complying with these permit conditions. Sunset Bay, LLC, only recently completed the requirements for the conservation easement.

It is my decision that a Class 1 Administrative Penalty in the amount of \$22,000 shall be assessed against the permittee. Permittee will pay the penalty by cashier's or certified check, payable to FAO, USAED Wilmington, and delivered to the Office of Counsel, U.S. Army Engineer District, P.O. Box 1890, Wilmington, North Carolina, 28402, within 30 days from the effective date of this letter.

The issuance of this Order constitutes final U.S. Army Corps of Engineers action in this case for purposes of judicial review.

This order will become effective 30 calendar days following its issuance unless an appeal is taken pursuant to 33 U.S.C. § 1319(g)(8) or a hearing is granted. Since no hearing was held prior to the issuance of this Order, a prior commenter may file a petition for a hearing within the 30-day period.

Issued this 18th day of July 2006.



John E. Pulliam, Jr.
Colonel, U.S. Army
District Commander